

15 January



The Manager  
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Dear Manager

**Re: Review of the Telecommunications Service Provider (Mobile Premium Services) Determinations 2010 (No. 1) and (No. 2)**

ACCAN thanks the ACMA for the opportunity to offer feedback on its review of *Telecommunications Service Provider (Mobile Premium Services) Determinations 2010 (No. 1) and (No. 2)* (hereafter **Determination 1** and **Determination 2**).

ACCAN has engaged extensively with the Mobile Premium Services (**MPS**) policy context in the past. Historically, there has been significant and systemic consumer harm associated with poorly managed and fraudulent MPS billing arrangements.<sup>1</sup> ACCAN has had concerns about the effectiveness of the Mobile Premium Services Industry Code (**the MPS Code**) in addressing the consumer harm due to opportunistic conduct of content providers. This has historically resulted in large numbers of consumers inadvertently incurring premium rate charging, particularly for 'subscription' services involving ongoing charging at regular intervals.

According to ACCAN's past estimates, the material consumer loss incurred by some industry players through unlawful MPS conduct sits at a minimum of \$47.64 million.<sup>2</sup> Consequently, it is of the utmost importance that careful consideration is taken when amending existing consumer safeguards surrounding MPS rules.

ACCAN's view is that it is acceptable to repeal Determination 1 on the condition that all existing obligations contained in that Determination are transferred to a revised MPS Code. It may also be reasonable to repeal Determination 2 in its current form; however, the ACMA's Do Not Bill powers must be retained in a directly enforceable instrument to mitigate the risk of consumer harm stemming from fraudulent third-party billing. Retaining the Do Not Bill powers ensure the ACMA is able to intervene swiftly if such circumstances arise.

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<sup>1</sup> Ipsos 2017, *Mobile third party billing: Consumer experiences and expectations*, prepared for ACCAN, <https://accan.org.au/our-work/research/1400-third-party-charges-consumer-experiences-and-expectations>

<sup>2</sup> ACCAN 2019, *Draft Mobile Premium Services Code (DR C637:2019) – Submission by the Australian Communications Consumer Action Network*, <http://accan.org.au/files/Submissions/ACCAN%20submission%20to%20the%20Draft%20Mobile%20Premium%20Services%20Code%20DR%20C637%202019.pdf>

## MPS Determination 1

In ACCAN's view, it is reasonable to transfer safeguards currently contained in Determination 1 into the MPS Code, so long as all provisions in Determination 1 are captured within that Code. This is due to the decreasing prevalence of MPS in the market.

ACCAN has reviewed the draft MPS Code circulated by Communications Alliance and has identified one key provision in Determination 1 that appears to have been omitted: the requirement to provide a customer-convenient service to facilitate the barring of MPS services.

Part 8 of Determination 1 outlines the requirement to provide a customer-convenient service:

- (1) *Without limiting subsection 7(3), the mobile carriage service provider must provide a **customer-convenient service** that assists a customer to request the barring of all premium SMS and MMS services in relation to a public mobile telecommunications service supplied by it to the customer.*
- (2) *A customer-convenient service means a service which:*
- (a) *ensures that a request mentioned in subsection (1) is **received promptly** by the mobile carriage service provider; and*
  - (b) *is **convenient** for the customer to use; and*
  - (c) *does not require the customer to **use a postal service or to attend at any location in person**; and*
  - (d) *can be **accessed by each of the methods by which the mobile carriage service provider ordinarily enables the customer to communicate** with the mobile carriage service provider in relation to the customer's public mobile telecommunications service.<sup>3</sup>*

It is essential this provision is transferred to the MPS Code to ensure consumers do not become subject to unduly onerous processes in order to bar MPS. Retaining this rule will build consumer confidence that the industry can and will effectively manage the barring of MPS in a co-regulatory context.

**Recommendation 1: That the ACMA ensures provisions contained in Determination 1 Part 8(1)-(2) are transferred to the updated MPS Code.**

## MPS Determination 2

ACCAN is not aware of any issues regarding removing obligations surrounding the Do Not Contract rule outlined in Part 2 of Determination 2, as we understand the content provider register has not been maintained and has very limited current utility.

However, it is ACCAN's view that the ACMA's Do Not Bill powers contained in Part 3 of Determination 2 must be retained in a directly enforceable instrument to ensure swift regulatory

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<sup>3</sup> *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) (Cth), Part 8, <https://www.legislation.gov.au/Details/F2014C011654>*

intervention in the event that an MPS content provider contravenes the Code and causes significant consumer detriment.<sup>4</sup>

We acknowledge that market changes and comparably low numbers of MPS-related TIO complaints indicate the prevalence of MPS usage is steadily decreasing. However, the ACMA has not demonstrated that appropriate conditions have been met to justify revoking the Do Not Bill powers. These powers should be in place for as long as there is a risk of MPS aggregator misconduct, however minor; this risk will persist so long as MPS is available to in any consumer market.

ACCAN recommends that the Do Not Bill powers should be expanded to incorporate direct carrier billing and any form of third-party billing, in order to consistently and effectively mitigate the risk of consumer harm from unauthorised third-party charges. ACCAN understands that fraudulent third-party billing remains a persistent issue and costs consumers dearly, as is demonstrated by the following case study.

### *Case study: Third party charges scam*

Between March and May 2020, a number of Telstra customers began reporting a \$5 charge on their monthly bill titled 'AirG MiniMe 500c'. Affected customers did not authorise this charge or recall signing up for the AirG service, which was an online chat function available through a Telstra media portal. It was later confirmed by Telstra to ACCAN that the AirG MiniMe charges were billed in error.

Several consumers reported difficulty getting the charge refunded, as Telstra and the third-party billed service provider, AirG, referred customers to each other to try and resolve the billing issue.<sup>5</sup> The number of Telstra customers that were affected by this issue is unclear. ACCAN understands that Telstra no longer provides AirG services.

**Recommendation 2: That the ACMA's Do Not Bill powers contained in Part 3 of Determination 2 are retained and varied to incorporate all forms of third-party billing.**

Thank you again for the opportunity to provide feedback on the review of MPS Determinations 1 and 2. Please do not hesitate to contact me at [Rebekah.Sarkoezy@accan.org.au](mailto:Rebekah.Sarkoezy@accan.org.au) or at 02 9288 4000 should you require further clarification on any of the points raised.

Yours Sincerely,

Rebekah Sarkoezy  
Policy Officer

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<sup>4</sup> *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2) (Cth)*, Part 3.10(1), <https://www.legislation.gov.au/Details/F2013C00124>

<sup>5</sup> Various Telstra customers 2020, *Unsolicited subscription to AirG and charges to account*, blog post, <https://crowdsupport.telstra.com.au/t5/billing-payments/unsolicited-subscription-to-airg-and-charges-to-account/td-p/861377>